

SENATE BILL No. 301

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-6-3; IC 11-8-8; IC 11-13-3-4; IC 35-32-2-1; IC 35-38-2-2.2; IC 35-42-4; IC 35-45-2-6.

Synopsis: Internet predators. Requires the criminal justice institute to develop and produce materials to assist parents and children in using the Internet safely. Requires a person required to register as a sex offender to register the person's electronic mail address and to re-register when the person obtains a new or an additional electronic mail address. Provides that, as a condition of probation or parole, a sex offender: (1) must consent to the search of the sex offender's computer at any time; (2) must permit disclosure by the sex offender's Internet service provider of the sex offender's Internet usage; (3) may be prohibited by a probation or parole officer from using or accessing certain web sites, chat rooms, or instant messaging programs; and (4) may not delete, erase, or tamper with information on the sex offender's computer that relates to Internet usage. Specifies the proper venue for the criminal action when a crime is committed by means of a cellular telephone or cellular telephone service. Makes possession of child pornography a Class C felony if the person possesses more than ten videotapes or 50 photographs. Provides enhanced penalties for child solicitation if it is done by using the text messaging function of a cellular telephone service. Makes it a Class A misdemeanor for a person at least 21 years of age to propose a face to face meeting with a child less than 14 years of age by computer network or cellular telephone text message if the communication between the parties involves a reference to sexual activity, and enhances the crime to a Class D felony for a second or subsequent offense.

Effective: July 1, 2007.

Mrvan

January 11, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.



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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 301

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-6-3, AS AMENDED BY P.L.173-2006,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 3. The institute is established to do the following:
4 (1) Evaluate state and local programs associated with:
5 (A) the prevention, detection, and solution of criminal
6 offenses;
7 (B) law enforcement; and
8 (C) the administration of criminal and juvenile justice.
9 (2) Improve and coordinate all aspects of law enforcement,
10 juvenile justice, and criminal justice in this state.
11 (3) Stimulate criminal and juvenile justice research.
12 (4) Develop new methods for the prevention and reduction of
13 crime.
14 (5) Prepare applications for funds under the Omnibus Act and the
15 Juvenile Justice Act.
16 (6) Administer victim and witness assistance funds.
17 (7) Administer the traffic safety functions assigned to the institute

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under IC 9-27-2.

(8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.

(9) Serve as the criminal justice statistical analysis center for this state.

(10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex offender registration under IC 11-8-8.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(12) Develop and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.

(13) Develop and produce materials to assist parents and children in using the Internet safely.

SECTION 2. IC 11-8-8-8, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The registration required under this chapter must include the following information:

(1) The sex offender's full name, alias, any name by which the sex offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks, or tattoos, Social Security number, driver's license number or state identification number, **electronic mail addresses**, principal residence address, and mailing address, if different from the sex offender's principal residence address.

(2) A description of the offense for which the sex offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.

(3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex offender's employers in Indiana, the name and address of each campus or location where the sex offender is enrolled in school in Indiana, and the address where the sex offender stays or intends to stay while in Indiana.

(4) A recent photograph of the sex offender.

(5) If the sex offender is a sexually violent predator, that the sex offender is a sexually violent predator.

(6) If the sex offender is required to register for life, that the sex

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offender is required to register for life.

(7) Any other information required by the department.

SECTION 3. IC 11-8-8-11, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) If a sex offender who is required to register under this chapter:

(1) changes:

(~~1~~) (A) principal residence address; or

(~~2~~) (B) if section 7(a)(2) or 7(a)(3) of this chapter applies, the place where the sex offender stays in Indiana; or

(2) obtains a new or an additional electronic mail address or changes an existing electronic mail address;

the sex offender shall register not more than seventy-two (72) hours after the address change **or the acquisition of a new electronic mail address** with the local law enforcement authority with whom the sex offender last registered.

(b) If a sex offender moves to a new county in Indiana, the local law enforcement authority referred to in subsection (a) shall inform the local law enforcement authority in the new county in Indiana of the sex offender's residence and forward all relevant registration information concerning the sex offender to the local law enforcement authority in the new county. The local law enforcement authority receiving notice under this subsection shall verify the address of the sex offender under section 13 of this chapter not more than seven (7) days after receiving the notice.

(c) If a sex offender who is required to register under section 7(a)(2) or 7(a)(3) of this chapter changes the sex offender's principal place of employment, principal place of vocation, or campus or location where the sex offender is enrolled in school, the sex offender shall register not more than seventy-two (72) hours after the change with the local law enforcement authority with whom the sex offender last registered.

(d) If a sex offender moves the sex offender's place of employment, vocation, or enrollment to a new county in Indiana, the local law enforcement authority referred to in subsection (c) shall inform the local law enforcement authority in the new county of the sex offender's new principal place of employment, vocation, or enrollment by forwarding relevant registration information to the local law enforcement authority in the new county.

(e) If a sex offender moves the sex offender's residence, place of employment, vocation, or enrollment to a new state, the local law enforcement authority shall inform the state police in the new state of the sex offender's new place of residence, employment, **vocation**, or

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1 enrollment.

2 (f) A local law enforcement authority shall make registration
3 information, including information concerning the duty to register and
4 the penalty for failing to register, available to a sex offender.

5 (g) A local law enforcement authority who is notified of a change
6 under subsection (a) or (c) shall immediately update the Indiana sex
7 offender registry web site established under IC 36-2-13-5.5.

8 SECTION 4. IC 11-13-3-4, AS AMENDED BY P.L.60-2006,
9 SECTION 1, AS AMENDED BY P.L.139-2006, SECTION 2, AS
10 AMENDED BY P.L.140-2006, SECTION 15, AND AS AMENDED
11 BY P.L.173-2006, SECTION 15, IS CORRECTED AND AMENDED
12 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A
13 condition to remaining on parole is that the parolee not commit a crime
14 during the period of parole.

15 (b) The parole board may also adopt, under IC 4-22-2, additional
16 conditions to remaining on parole and require a parolee to satisfy one
17 (1) or more of these conditions. These conditions must be reasonably
18 related to the parolee's successful reintegration into the community and
19 not unduly restrictive of a fundamental right.

20 (c) If a person is released on parole, the parolee shall be given a
21 written statement of the conditions of parole. Signed copies of this
22 statement shall be:

- 23 (1) retained by the parolee;
24 (2) forwarded to any person charged with the parolee's
25 supervision; and
26 (3) placed in the parolee's master file.

27 (d) The parole board may modify parole conditions if the parolee
28 receives notice of that action and had ten (10) days after receipt of the
29 notice to express the parolee's views on the proposed modification.
30 This subsection does not apply to modification of parole conditions
31 after a revocation proceeding under section 10 of this chapter.

32 (e) As a condition of parole, the parole board may require the
33 parolee to reside in a particular parole area. In determining a parolee's
34 residence requirement, the parole board shall:

- 35 (1) consider:
36 (A) the residence of the parolee prior to the parolee's
37 incarceration; and
38 (B) the parolee's place of employment; and
39 (2) assign the parolee to reside in the county where the parolee
40 resided prior to the parolee's incarceration unless assignment on
41 this basis would be detrimental to the parolee's successful
42 reintegration into the community.

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(f) As a condition of parole, the parole board may require the parolee to:

- (1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and
- (2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

- (1) may require a parolee who is a sex ~~and violent~~ offender (as defined in ~~IC 5-2-12-4~~ IC 11-8-8-5) to:

- (A) participate in a treatment program for sex offenders approved by the parole board; and
- (B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:
 - (i) receives the parole board's approval; or
 - (ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

- (A) require a parolee who is ~~an~~ a sex offender (as defined in ~~IC 5-2-12-4~~ IC 11-8-8-5) to register with a ~~sheriff (or the police chief of a consolidated city)~~ local law enforcement authority under ~~IC 5-2-12-5~~; IC 11-8-8;
- (B) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, ~~unless the sex offender obtains written approval from the parole board; and~~
- (C) prohibit a parolee who is ~~an~~ a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense ~~unless the sex offender obtains a waiver under IC 35-38-2-2.5; and~~
- (D) ~~prohibit a parolee from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age;~~
- (E) require the sex offender to consent:**
 - (i) to the search of the sex offender's computer at any time; and**

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- (ii) to the disclosure of the sex offender's Internet usage by the sex offender's Internet service provider; and
- (F) prohibit the sex offender from:
- (i) accessing or using certain web sites, chat rooms, or instant messaging programs; and
- (ii) deleting, erasing, or tampering with information on the sex offender's computer that relates to the person's Internet usage.

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

(h) The address of the victim of a parolee who is ~~an~~ a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential, even if the sex offender obtains a waiver under IC 35-38-2-2.5.

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

~~(j)~~ (j) As a condition of parole, the parole board:

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

(2) may require a parolee who is a sex offender (as defined in ~~IC 5-2-12-4~~, IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

~~(j)~~ (k) As a condition of parole, the parole board may prohibit, in accordance with ~~IC 35-38-2-2.5~~, IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

SECTION 5. IC 35-32-2-1, AS AMENDED BY P.L.115-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law.

(b) If a person committing an offense upon the person of another is located in one (1) county and the person's victim is located in another county at the time of the commission of the offense, the trial may be in either of the counties.

(c) If the offense involves killing or causing the death of another

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human being, the trial may be in the county in which the:

- (1) cause of death is inflicted;
- (2) death occurs; or
- (3) victim's body is found.

(d) If an offense is committed in Indiana and it cannot readily be determined in which county the offense was committed, trial may be in any county in which an act was committed in furtherance of the offense.

(e) If an offense is commenced outside Indiana and completed within Indiana, the offender may be tried in any county where any act in furtherance of the offense occurred.

(f) If an offense commenced inside Indiana is completed outside Indiana, the offender shall be tried in any county where an act in furtherance of the offense occurred.

(g) If an offense is committed on the portions of the Ohio or Wabash Rivers where they form a part of the boundaries of this state, trial may be in the county that is adjacent to the river and whose boundaries, if projected across the river, would include the place where the offense was committed.

(h) If an offense is committed at a place which is on or near a common boundary which is shared by two (2) or more counties and it cannot be readily determined where the offense was committed, then the trial may be in any county sharing the common boundary.

(i) If an offense is committed on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more counties, the trial may be held in any county sharing the common boundary.

(j) If an offense is committed by use of the Internet or another computer network (as defined in IC 35-43-2-3), **or by the use of the text messaging function of a cellular telephone service**, the trial may be held in any county:

- (1) from which or to which access to the Internet, ~~or~~ other computer network, **or cellular telephone service** was made; or
- (2) in which any **cellular telephone**, computer, computer data, computer software, or computer network that was used to access the Internet, ~~or~~ other computer network, **or cellular telephone service** is located.

(k) If an offense:

(1) is committed by use of:

- (A) the Internet or another computer network (as defined in IC 35-43-2-3); or
- (B) another form of electronic communication, **including**

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cellular telephone service; and

(2) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense;
the trial may be held in the county where the victim resides at the time of the offense.

SECTION 6. IC 35-38-2-2.2, AS AMENDED BY P.L.173-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-5), the court shall:

(1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; ~~and~~

(2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the sex offender obtains written approval from the court;

(3) require the sex offender to consent:

(A) to the search of the sex offender's computer at any time; and

(B) to the disclosure of the sex offender's Internet usage by the sex offender's Internet service provider; and

(4) prohibit the sex offender from:

(A) accessing or using certain web sites, chat rooms, or instant messaging programs; and

(B) deleting, erasing, or tampering with information on the sex offender's computer that relates to the person's Internet usage.

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

SECTION 7. IC 35-42-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sado-masochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child

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intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who is less than sixteen (16) years of age or appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

However, the offense is a Class C felony if the person possesses more than ten (10) videotapes, digital video discs (DVDs), or motion pictures, or more than fifty (50) pictures, drawings, photographs, negative images, undeveloped photographs, digitized images, or other pictorial representations.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials are for legitimate scientific or educational purposes.

SECTION 8. IC 35-42-4-6, AS AMENDED BY P.L.124-2005,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a)) **or the text messaging function of a cellular telephone service;**
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **or the text messaging function of a cellular telephone service.**

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)) **or the text messaging function of a cellular telephone service.**

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

SECTION 9. IC 35-45-2-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2007]: Sec. 6. (a) This section does not apply to the following:

(1) The parent, guardian, or custodian of the child.

(2) A person whom the child's parent, guardian, or custodian permits or has permitted the child to meet face to face.

(3) A person to whom the child makes a report of abuse or neglect.

(4) A person to whom the child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "propose" means to command, authorize, urge, incite, request, or advise an individual.

(c) As used in this section, "reference to sexual activity" means any reference to sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(d) A person who knowingly or intentionally proposes a face to face meeting with a child whom the person believes to be less than fourteen (14) years of age by using a computer network (as defined in IC 35-43-2-3(a)) or the text messaging function of a cellular telephone service commits improper communication with a minor, a Class A misdemeanor, if:

(1) the person is at least twenty-one (21) years of age; and

(2) the communication by computer network or text messaging function involves, or a previous communication between the person and the child involved, a reference to sexual activity.

However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

(e) It is a defense to a prosecution under this section that the person reasonably believed that a face to face meeting with the child was necessary to prevent harm to the child or another person.

SECTION 10. [EFFECTIVE JULY 1, 2007] IC 35-42-4-4, and IC 35-42-4-6, both as amended by this act, and IC 35-45-2-6, as added by this act, apply only to crimes committed after June 30, 2007.

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